

FIRST REGULAR SESSION

# SENATE BILL NO. 35

94TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR DAYS.

Pre-filed December 1, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

0095S.011

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## AN ACT

To repeal sections 475.010 and 475.045, RSMo, and to enact in lieu thereof three new sections relating to standby guardianship of minors.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 475.010 and 475.045, RSMo, are repealed and three  
2 new sections enacted in lieu thereof, to be known as sections 475.010, 475.045,  
3 and 475.046, to read as follows:

475.010. When used in this chapter, unless otherwise apparent from the  
2 context, the following terms mean:

3 (1) "Adult", a person who has reached the age of eighteen years;

4 (2) "Claims", liabilities of the protectee arising in contract, in tort or  
5 otherwise, before or after the appointment of a conservator, and liabilities of the  
6 estate which arise at or after the adjudication of disability or after the  
7 appointment of a conservator of the estate, including expenses of the adjudication  
8 and of administration. The term does not include demands or disputes regarding  
9 title of the protectee to specific assets alleged to be included in the estate;

10 (3) "Conservator", one appointed by a court to have the care and custody  
11 of the estate of a minor or a disabled person. A "limited conservator" is one  
12 whose duties or powers are limited. The term "conservator", as used in this  
13 chapter, includes "limited conservator" unless otherwise specified or apparent  
14 from the context;

15 (4) "Disabled" or "disabled person", one who is:

16 (a) Unable by reason of any physical or mental condition to receive and

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

17 evaluate information or to communicate decisions to such an extent that the  
18 person lacks ability to manage his financial resources[,]; or

19 (b) The term "disabled" or "disabled person", as used in this chapter  
20 includes the terms "partially disabled" or "partially disabled person" unless  
21 otherwise specified or apparent from the context;

22 (5) "Eligible person" or "qualified person", a natural person, social service  
23 agency, corporation or national or state banking organization qualified to act as  
24 guardian of the person or conservator of the estate pursuant to the provisions of  
25 section 475.055;

26 (6) "Guardian", one appointed by a court to have the care and custody of  
27 the person of a minor or of an incapacitated person. A "limited guardian" is one  
28 whose duties or powers are limited. **A "standby guardian" is one approved**  
29 **by the court to temporarily assume the duties of guardian of a minor**  
30 **child under section 475.045.** The term "guardian", as used in this chapter,  
31 includes "limited guardian" or **"standby guardian"** unless otherwise specified  
32 or apparent from the context;

33 (7) "Guardian ad litem", one appointed by a court, in which particular  
34 litigation is pending, to represent a minor, an incapacitated person, a disabled  
35 person, or an unborn person in that particular proceeding or as otherwise  
36 specified in this code;

37 (8) "Habilitation", instruction, training, guidance or treatment designed  
38 to enable and encourage a mentally retarded or developmentally disabled person  
39 as defined in chapter 630, RSMo, to acquire and maintain those life skills needed  
40 to cope more effectively with the demands of his **or her** own person and of his **or**  
41 **her** environment;

42 (9) "Incapacitated person", one who is unable by reason of any physical or  
43 mental condition to receive and evaluate information or to communicate decisions  
44 to such an extent that he **or she** lacks capacity to meet essential requirements  
45 for food, clothing, shelter, safety or other care such that serious physical injury,  
46 illness, or disease is likely to occur. The term "incapacitated person" as used in  
47 this chapter includes the term "partially incapacitated person" unless otherwise  
48 specified or apparent from the context;

49 (10) "Least restrictive environment", that there shall be imposed on the  
50 personal liberty of the ward only such restraint as is necessary to prevent [him]  
51 **the ward** from injuring himself **or herself** and others and to provide [him] **the**  
52 **ward** with such care, habilitation and treatment as are appropriate for [him] **the**  
53 **ward** considering his **or her** physical and mental condition and financial means;

54 (11) "Manage financial resources", either those actions necessary to obtain,  
55 administer, and dispose of real and personal property, intangible property,  
56 business property, benefits, income or any assets, or those actions necessary to  
57 prevent waste, loss or dissipation of property, or those actions necessary to  
58 provide for the care and support of such person or anyone legally dependent upon  
59 [him] **such person** by a person of ordinary skills and intelligence commensurate  
60 with his **or her** training and education;

61 (12) "Minor", any person who is under the age of eighteen years;

62 (13) **"Parent", one legally established as the parent of the minor;**

63 **(14) "Parent with physical custody", the legally established parent**  
64 **with physical custody of the minor;**

65 (15) "Partially disabled person", one who is unable by reason of any  
66 physical or mental condition to receive and evaluate information or to  
67 communicate decisions to such an extent that [he] **such person** lacks capacity  
68 to manage, in part, his **or her** financial resources;

69 [(14)] **(16) "Partially incapacitated person", one who is unable by reason**  
70 **of any physical or mental condition to receive and evaluate information or to**  
71 **communicate decisions to the extent that [he] such person** lacks capacity to  
72 meet, in part, essential requirements for food, clothing, shelter, safety, or other  
73 care without court-ordered assistance;

74 **(17) "Presumed parent", a person defined in section 210.822, RSMo;**

75 [(15)] **(18) "Protectee", a person for whose estate a conservator or limited**  
76 **conservator has been appointed or with respect to whose estate a transaction has**  
77 **been authorized by the court under section 475.092 without appointment of a**  
78 **conservator or limited conservator;**

79 **(19) "Putative parent", a parent registered under the putative**  
80 **father registry under section 192.016, RSMo;**

81 [(16)] **(20) "Social service agency", a charitable organization organized**  
82 **and incorporated as a not-for-profit corporation under the laws of this state and**  
83 **which qualifies as an exempt organization within the meaning of section 501(c)(3),**  
84 **or any successor provision thereto of the federal Internal Revenue Code;**

85 [(17)] **(21) "Treatment", the prevention, amelioration or cure of a person's**  
86 **physical and mental illnesses or incapacities;**

87 [(18)] **(22) "Ward" [is], a minor or an incapacitated person for whom a**  
88 **guardian or limited guardian has been appointed.**

475.045. 1. Except in cases where they fail or refuse to give required  
2 security or are adjudged unfit for the duties of guardianship or conservatorship,

3 or waive their rights to be appointed, the following persons, if otherwise qualified,  
4 shall be appointed as guardians or conservators of minors:

5 (1) The parent or parents of the minor, except as provided in section  
6 475.030;

7 (2) If any minor over the age of fourteen years has no qualified parent  
8 living, a person nominated by the minor, unless the court finds appointment  
9 contrary to the best interests of the minor;

10 (3) [Where both parents of a minor are dead, any person appointed by the  
11 will of the last surviving parent.] **Any person appointed by will or other  
12 signed writing by an appointing parent** who has not been adjudged unfit or  
13 incompetent for the duties of guardian or conservator.

14 **2. Without surrendering parental rights, any parent, legal  
15 guardian, or other court-approved party interested in the minor's  
16 welfare may appoint a standby guardian of a minor in accordance with  
17 section 475.046.**

18 **3.** Unfitness of any of the persons mentioned in subsection 1 for the duties  
19 of guardianship or conservatorship may be adjudged by the court after due notice  
20 and hearing.

21 **[3.] 4. Unfitness of any of the persons listed in subsection 1 of this  
22 section for the duties of guardianship or conservatorship may be  
23 adjudged by the court after due notice and hearing.**

24 **5.** If no appointment is made under subsection 1, the court shall appoint  
25 as guardian or conservator of a minor the most suitable person who is willing to  
26 serve.

**475.046. 1. Upon petition as provided in section 475.060 of an  
2 appointing parent, legal guardian, or other court approved party  
3 interested in the minor's welfare, the court may, before appointment  
4 becomes effective, confirm the parent's selection of a standby guardian  
5 and terminate the rights of other persons to object. Once the petition  
6 is filed, the court shall promptly set the petition for hearing.**

7 **2. Reasonable notice of the petition and hearing shall be provided  
8 to the parent, presumed parent, or putative parent under section 475.070  
9 and section 472.100, RSMo.**

10 **3. The appointment of a standby guardian becomes effective upon  
11 the disability or incapacitation of the appointing parent or legal  
12 guardian under the definitions in section 475.010 or upon the appointing  
13 parent's or legal guardian's death. The standby guardian has the**

14 responsibility to bring to the court evidence that the disability or  
15 incapacitation of the appointing parent or guardian has occurred.

16 4. The standby guardian becomes eligible to act upon the filing of  
17 an acceptance of appointment, which shall be filed within thirty days  
18 after the standby guardian's confirmation by the court becomes  
19 effective. The standby guardian shall:

20 (1) File the acceptance of appointment and a copy of the will with  
21 the court of the county in which the will was or could be probated, or in  
22 the case of another appointment instrument, file the acceptance of  
23 appointment and the appointing instrument with the court of the county  
24 in which the minor resides or is present; and

25 (2) Give written notice of the acceptance of appointment as  
26 provided in section 475.070.

27 5. The standby guardian shall have the same general powers and  
28 duties as provided for a guardian in section 475.120, except that after the  
29 death of the appointing parent or guardian, standby guardianship may  
30 be made permanent when the standby guardian petitions the court to  
31 make a formal guardianship determination. The petition may be filed  
32 within sixty days of the appointing parent's or guardian's death.

33 6. The court lacks jurisdiction to proceed on a petition for the  
34 appointment of a guardian of a minor if (i) the minor has a living parent,  
35 adoptive parent, or adjudicated parent whose parental rights have not  
36 been terminated, whose whereabouts are known, and who is willing and  
37 able to make and carry out day-to-day child care decisions concerning  
38 the minor, unless the parent or parents consent to the appointment or,  
39 after receiving notice of the hearing, fail to object to the appointment at  
40 the hearing on the petition; or (ii) there is a guardian for the minor  
41 appointed by a court of competent jurisdiction. There shall be a  
42 rebuttable presumption that a parent of a minor is willing and able to  
43 make and carry out day-to-day child care decisions concerning the  
44 minor, but the presumption may be rebutted by a preponderance of the  
45 evidence.

46 7. Until the court confirms an appointee under this section, a  
47 minor who is the subject of an appointment by a parent and who has  
48 attained fourteen years of age, or a person other than a parent or  
49 guardian having care and custody of the minor, may attempt to prevent  
50 or terminate the appointment at any time by filing a written objection

51 in the court in which the appointing instrument is filed. An objection  
52 may be withdrawn and, if withdrawn, is of no effect. The court shall  
53 have discretion and the objection shall not preclude judicial  
54 appointment of the person selected by the parent.

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